

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,

Plaintiff,

V.

SAMSUNG ELECTRONICS CO, LTD, ET
AL.,

Defendants.

NETLIST, INC.,

Plaintiff,

V.

MICRON TECHNOLOGY, INC., ET AL.,

Defendants.

CIV. A. NO. 2:22-CV-00293-JRG

(Lead Case)

CIV. A. NO. 2:22-CV-00294-JRG

(Member Case)

ORDER OF SPECIAL MASTER

Pursuant to the Court’s Orders dated December 8, 2023 (Dkt. No. 269) and January 2, 2024 (Dkt. No. 311), the undersigned was appointed Special Master. On January 5, 2024, the Special Master held a hearing regarding issues within the scope of his appointment (the “January 5 Hearing”). On January 18, 2024, the Special Master issued a Report and Recommendation (Dkt. No. 377) (“R&R”) addressing the majority of disputes within his appointment.¹ This Order of the Special Master addresses two disputes that have subsequently arisen between Plaintiff Netlist, Inc.’s (“Netlist”), Defendants Micron Technology, Inc., Micron Semiconductor Products, Inc., and

¹ The Special Master reserved issuing a recommendation with respect to Micron’s Motion to Strike Plaintiff’s November 19, 2023 Supplemental Response to Interrogatory No. 4 (Dkt. No. 271), on the basis that briefing had not yet concluded and the motion was not yet ripe for resolution.

Micron Technology Texas LLC (“Micron”), and Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Semiconductor Inc. (collectively, “Samsung”).

1. Dispute Regarding Micron’s Supplemental Response to Interrogatory No. 12

The Special Master’s appointment includes the resolution of Netlist’s Motion to Compel Micron Defendants’ Responses to Interrogatory Nos. 5, 6, 12, 17, 19, 24, and 25 (Dkt. No. 223). The January 5 Hearing addressed Dkt. No. 223. Based on representations by counsel for Micron that Micron would “agree to supplement [its] responses for the interrogatories at issue in Docket No. 223” and that it would “[try] to supplement all of them” by January 19, 2024, the Special Master recommended that Micron be ordered to supplement all interrogatories at issue in Dkt. No. 223 no later than January 19, 2024. (R&R at 11–12).

On January 22, 2024, Micron’s counsel contacted the Special Master via email noting that, although Micron considered the Special Master’s recommendation to be in error (despite its representation at the hearing), it inadvertently omitted a supplemental response to Netlist’s Interrogatory No. 12 when it served supplemental responses on January 19. Counsel stated that Micron would serve its supplemental response to Interrogatory No. 12 that day, January 22. On January 27, 2024, Netlist responded and objected to Micron’s January 22 supplementation of its response to Netlist’s Interrogatory No. 12, arguing that it was untimely.

The Special Master concludes that briefing on the merits of Netlist and Micron’s dispute would be beneficial. As Micron has already served its supplemental response to Netlist’s Interrogatory No. 12, the burden lies with Netlist to move to strike the supplemental response. The Special Master **ORDERS** that Netlist may file a motion to strike Micron’s supplemental response to Netlist’s Interrogatory No. 12 no later than **Monday, February 5, 2024**, and Micron may file any response no later than **Monday, February 12, 2024**. No reply or sur-reply briefs shall be filed.

2. Protective Order Dispute

On January 24, 2024, counsel for Samsung contacted the Special Master’s assistant via email to inquire about procedures for redacting the January 5 Hearing transcript and the R&R. The Special Master’s assistant—after conferring with the Special Master—advised the parties to confer regarding redactions and submit any disputes regarding the same to the Special Master.

On January 28, 2024, Samsung’s counsel contacted the Special Master noting that, although Samsung would not request redactions to the R&R, it would request permission to file the R&R in *Netlist, Inc. v. Samsung Elecs. Co.*, No. 8:20-cv-993 (C.D. Cal.) (the “C.D. Cal. Action”) in advance of a hearing on February 5, 2024. Counsel for Netlist responded on January 30, 2024, noting that it does not oppose submitting the R&R or January 5 Hearing transcript in the C.D. Cal. Action, but seeks broader authority to submit *all* matters under seal in this case (i) excluding third-party confidential information and (ii) so long as all filings remain under seal in the C.D. Cal. Action.

The Court’s Protective Order provides that “[a]ny DESIGNATED MATERIAL that is filed with the Court shall be filed under seal and shall remain under seal until further order of the Court.” (Dkt. No. 60 ¶ 17). Netlist and Samsung’s requests amount to requests to modify the Court’s Protective Order to permit the use of sealed filings in the C.D. Cal. Action. Absent an order of the Court permitting the Special Master to modify the Court’s Protective Order, the Special Master does not have the authority to modify the Protective Order in the manner requested by Samsung or Netlist.

However, all parties—Netlist, Samsung, and Micron—are **ORDERED** to confer regarding redactions to the January 5 Hearing transcript and R&R and file their agreed redactions no later than **Thursday, February 1, 2024 at 5:00 p.m. Central**. If all parties agree that no redactions are necessary, unredacted versions shall be filed instead.

Signed this 31st day of January 2024.

/s/ David Folsom

David Folsom

Special Master

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on this 31st day of January 2024. As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ David Folsom

David Folsom